IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal From Order No. 916 of 2001
(Old No. 715 of 1988)

1. Smt. Neela Widow of Bhaskarbhai Balashankar Desai
2. Beenal Bhaskarbhai Desai
3. Heeral Bhaskarbhai Desai
   Minor daughters of
   Late Sri Bhaskarbhai Balashanker Desai
4. Ramankantaben Balashankar Desai (deceased)

4/1 Narendra Balashankar
S/o Late Sri Balashankar Desai
R/o E0215 Bokar Nagar Apartment
Near Muktanand Bus Stop
Karelibagh, Baroda, Gujarat
Appellant No. 2 and 3 being minor represented by
Their guardian and next friend their mother
Appellant No. 1, Smt. Neela
Widow of Bhaskarbhai Balashanker Desai
All R/o of Ghadialipole
Desai Sheri, Baroda
Gujarat ..... Appellants

Vs

1. Dharamvir Mangaram
   R/o Village Nangal Kalan
   District Sonepat,
   Hariana State
2. Baldev Singh Ram Lal
   R/o Single Storey 1-B/28
   Rameshnagar
   New Delhi
3. New India Assurance Company
   30-C Community Center
   Naraiana Industrial Area
   New Delhi
4. Ashok Kumar Jain
   S/o Sri Kailash Chand Jain
   R/o 90/15 Railway Colony
   Kishanganj, Delhi ..... Respondents

Sri K.N. Joshi, learned counsel for the appellants
Sri T.A. Khan, learned counsel for the respondent No.3

Hon'ble B.C. Kandpal, J.

This appeal under Section 110-D of the Motor Vehicle Act has been filed by the appellants against the

judgment and award dated 07.05.1988 passed by M.A.CT./District Judge, Almora in M.A.C.P. No. 92 of 1984 Smt. Neela & others Vs Dharamvir Mangaram & others thereby the Tribunal concerned awarded a sum of Rs. 3,60,000/- as compensation along with an interest @ 12% per annum in favour of the claimants.

2. Brief facts of the case are that on 26.05.1984, one Bhaskarbhai Desai (deceased) was traveling in the Matador bearing Registration No. DEP 3442 along with his wife Smt. Neela from Ranikhet to Almora, The said vehicle was being driven by the respondent No. 1- Dharamvir. At 04:30 p.m. when the Matador Van reached near Tunakot Dorabdhar near Pilkholi village, the driver lost control over the vehicle resulting which the vehicle fell into the valley below 400ft. Due to this accident, Bhaskarbhai Desai along with other persons died at the spot and some of them received injuries. The accident was occurred due to rash and negligent driving of the driver. It has been alleged by the claimants that at the time of the accident the deceased- Bhaskarbhai Desai was a clerk in Bank of Baroda and getting Rs. 1861.50 per month as salary. The further stated that at the time of the accident the deceased was aged about 37 years and he would have received promotion and would have his salary between Rs. 4,000/- to Rs. 5,000/- at the time of his retirement. The deceased would have contributed Rs. 2,000/- per month for the maintenance of the claimants. On these grounds the compensation of Rs. 6.00 lacs has been claimed by the appellants/claimants.

3. During the pendency of the claim petition, the respondents No. 2- Baldev Singh Ram Lal had taken a plea that he had already transferred the vehicle before the accident

to one Ashok Kumar Jain. Therefore, in the claim petition he was also impleaded as a party.

4. In the written statement respondent No. 2- Baldev Singh Ram Lal has submitted that on the date of accident, he was not the owner of the vehicle in question. In this regard he has also produced the delivery receipt and affidavit from the said purchaser. On the basis of this fact, he has alleged that he is not liable to pay the compensation. New India Assurance Company Ltd. has also filed written statement alleging therein that as the respondent No. 2 had already transferred the Matador Van to Ashok Kumar Jain, the Insurance Company is not liable to pay any compensation on account of the said transfer without any intimation to the Insurance Company. Ashok Kumar Jain - respondent No. 4 has also filed his written statement stating therein that the accident was caused due to mechanical defect and it did not take place due to rash and negligent driving on the part of the driver.

5. On the basis of the pleadings, the Tribunal framed following issues:-

1. Whether the accident of Matador No. DEP 3442 took place due to rash and negligent driving by its driver, O.P. No. 1- Dharamvir Nanga Ram?
2. Whether the accident took place due to mechanical defect in the vehicle as alleged by O.P. No. 47. If so, its effect?
3. Whether the deceased Bhashkar Bhar Wala Shankar Desai was traveling in Vehicle No. DEP 3442 at the time of the accident and whether he died as a result of a accident of the said Matador?

4. Whether the O.P. No. 2 or O.P. No. 4 was the owner of the Matador in question on the date of the accident? In any case, its effect?
5. Whether the liability of the O.P. No.3, Assurance Company, if any, ceased due to the alleged transfer of the vehicle by O.P. No. 2 to O.P. No. 4 as alleged?
6. Whether the matador in question was carrying more than 9 persons? If so, whether the liability of the O.P. No. 3 - Assurance Company ceased as alleged?
7. Whether the driver of the Matador vehicle had a proper licence at the time of the accident? If not, its effect?
8. To what amount of compensation, if any, and from which of the O.P.s, is the petitioner entitled?

6. Having heard the learned counsel for the parties and perused the entire material available on record, the Tribunal by way of impugned judgment and award dated 07.05.1988 awarded a sum of Rs. 3,60,000/- along with 12% interest per annum to be paid by the respondent No. 1 – Dhramvir and respondent No. 4 - Ashok Kumar Jain who are the driver and owner of the vehicle in question.

7. Feeling aggrieved by the aforesaid judgment and award passed by the Tribunal concerned, the claimants/appellants filed this appeal before the Allahabad High Court which has been transferred to this Court after creation of separate State.

8. Heard Sri Sri K.N. Joshi, learned counsel for the appellants, Sri T.A. Khan, learned counsel for the respondent No. 3 and perused the record.

9. Learned counsel for the appellants firstly argued that the claim tribunal has awarded a meager amount of compensation in favour of the claimants/appellants. It has been submitted that the income and the age of the deceased has not been considered in its true perspective and the amount of compensation has been awarded in an arbitrary manner.

10. Perusal of the record shows that the claim tribunal after hearing learned counsel for the parties and after assessing the entire evidence available on record came to the conclusition that the claimants are entitled for an amount of Rs. 3,60,000/- as compensation along with interest @ 12% per annum.

11. Another point which has been alleged by the learned counsel for the appellants is that the claim tribunal has wrongly fixed the liability on the shoulder of the driver and the owner of the offending vehicle while the compensation should have been paid by the Insurance Company with which the offending vehicle was insured at the time of the accident.

12. I fail to appreciate the argument advanced by the learned counsel for the appellants. It is important to mention here that neither the transferred of the offending vehicle nor the transferred owner has approached to this Court by way of the appeal against the impugned judgment and award dated 07.05.1988. The appellants/claimants have no right to agitate this point in the appeal. He can simply go in the execution

proceeding for getting the judgment and award of the accident before the tribunal concerned executed.

13. Having considered the arguments advanced by the learned counsel for the parties and after having considered the entire evidence available on record, I do not find any infirmity in the impugned judgment and award passed by the Tribunal concerned in awarding the award of compensation in favour of the appellants/claimants. The impugned judgment and award does not suffer with any infirmity and I also do not find any reasonable ground to enhance the amount of compensation. Therefore, I am of the view that the appeal does not bear any force and is liable to be dismissed.

14. Accordingly, the appeal is dismissed. No order as to costs.

(B.C. Kandpal, J.)

22.09.2006
ASWAL